

to "means" in the last paragraph and deletes the phrase "an internal space formed by." None of these amendments narrow the scope of the respective claims.

Claim 6 has been amended to recite that the "lower housing includes a floor with a hole passing therethrough" and to include a wherein clause regarding how the regulating components are accessible through that hole.

Claims 10, 15, and 16 have been amended to include the recitations of original claim 6. Claim 10 also has been amended to include the recitations of original claim 9.

The Examiner rejected claim 13 under 35 U.S.C. §112, first paragraph, purportedly for the specification failing "to provide an enabling disclosure of means for rotating the platform." This rejection is respectfully traversed.

Claim 13 recites a

means for rotating said platform of said upper housing relative to said lower housing such that said lower housing remains stationary while said platform freely rotates on said lower housing, said means providing an opening passing therethrough aligned with the opening of said lower housing cap . . .

The specification, in at least two places, describes a bearing element that allows the rotation of the upper housing relative to the lower housing. See specification p. 5, lines 23-24, p. 7, lines 16-17. Thus, based on a reading of the specification, one of ordinary skill in the art will appreciate that a bearing allows for this rotation. Applicant respectfully submits that this rejection is improper and should be withdrawn.

The Examiner rejected claims 2, 4, and 13 under 35 U.S.C. §112, second paragraph, as purportedly "being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." This rejection is respectfully traversed.

Claim 2 is definite as it claims subject matter which Applicant regards as the invention.

"The horizontal plane" is inherent and does not require an antecedent recitation, because the gripping area is angled based on the recitation of "a tall upright portion" and "a short upright portion" in claim 1. See MPEP 2173.05(e). Thus, "the horizontal plane" is inherent as existing due to the gripping area being angled and one way to describe such an angle is relative to "the horizontal plane" as was done in claim 2. See, e.g., specification p. 8, lines 6-8, p. 27, lines 15-16.

Applicant concedes that "flared out" might be descriptive of the "tall upright portion" recited in claim 2; however, "flared out" is not used within the specification. The use of "tapered out" in the manner that it is used is not repugnant to the definition of "taper," as such the Applicant should be permitted to be his own lexicographer particularly in view of the ramifications of making the amendment suggested by the Examiner in view of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000).

The use of "a top surface" and "a conical envelope" are both inherent pieces of "the gripping area" as recited in claims 1 and 2. Claim 1 recites that the "gripping area generally is tapered from said short upright portion to said tall upright portion." Inherent in the existence of the "gripping area" is that it has a top surface. Inherent in the gripping area being tapered is that a phantom "conical envelope" is created around the gripping area particularly in view of the definitions of "conical" and "envelope." Claim 2 is defining the "top surface" relative to the general tapering of the gripping area such that the conical envelope that exists around that taper does not include all of the arched

top surface. Furthermore, this relationship is discussed, for example, at page 8, lines 8-15 of the specification and illustrated, for example, in Figures 1(c) and 3(b).

Claim 4 has been amended to state that the device includes, in addition to the other components, regulating components as the device is defined in claim 4. This amendment provides antecedent basis for "said regulating components." Thus, this rejection is moot with respect to amended claim 4.

Claim 13 is clear, particularly in view of the specification and drawings. Inherent in a "cylindrical base" is a three-dimensional aspect given the definition of "cylindrical," which is "[h]aving the shape or properties of a cylinder." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY, p. 342 (The Riverside Publishing Co. 1988). "Base" is defined as "[t]he lowest or bottom part" and "[a] supporting layer or part: FOUNDATION <a base of solid granite supporting the tower.>." *Id.* at 155. Thus, the "cylindrical base" is a three-dimensional component that inherently includes a "periphery," which in mathematical terms is defined as a perimeter or "[t]he surface of a solid." *Id.* at 874. Thus, the recitation of "a rim around a periphery of said cylindrical base" provides a structural relationship. The recitation of "said rim engages said rim of said lower housing" is true. The specification describes this engagement as

[t]he rim 154 of the upper housing 150 preferably slides over the rim 124 of the lower housing 110 to couple and secure the upper housing 150 and the lower housing 110 together.

Specification, p. 6, lines 2-4. This description is associated with Figure 1(b), which shows engagement of rim 154 and rim 124. This engagement is also shown in Figure 4(b) although these particular reference numerals (i.e., 124 and 154) have not been repeated in Figure 4(b). Thus, Applicant is confused as to how the Examiner is relying upon Figure 4(b) to state that this particular recitation is not true given the above.

Applicant is also confused as to why the Examiner believes the term "therethrough" is unclear in the recitation of "said means providing an opening passing therethrough aligned with the opening of said lower housing cap." The "opening" is passing through "said means," which is the "means for rotating said platform . . .," and the "opening" is aligned with the lower housing cap opening.

The amendment of claim 13 adds "resisting rotation" prior to the second and third uses of means in the last paragraph of claim 13. Applicant submits that the use of just "said means" in that paragraph does not prevent the Examiner from understanding the claim sufficient to apply art to this claim. Similarly, the use of the phrase "an internal space" is inherent in the "upper housing shrouding said cylindrical base" of said lower housing, and that one of ordinary skill in the art would understand what this "internal space" is. To simplify matters, this phrase has been deleted from claim 13.

Applicant respectfully submits that this rejection is overcome and/or moot with respect to claims 2, 4, and 13. Applicant respectfully submits that claim 13 as filed was sufficiently clear to allow for examination and thus if the Examiner has and/or finds art upon which to reject claim 13 in the next Office Action, if there is one, that the next Office Action should not be final.

The Examiner rejected claim 6 under 35 U.S.C. §102(b) as allegedly being anticipated by Bishow (U.S. Pat. No. 4,193,592). This rejection is respectfully traversed.

35 U.S.C. §102 by its language requires that each and every element of a claim be present in a single cited reference to properly have that reference anticipate that claim. See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566, 1567 (Fed. Cir. 1992), *citing*

Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 677, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988), *Lindemann Maschinenfabrik v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984); *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992), *Elmer v. ICC Fabricating Inc.*, 67 F.3d 1571, 36 USPQ2d 1417, 1419 (Fed. Cir. 1995).

Bishow discloses a rocking rotational toy with a top platform 12 for a user to sit, stand, or kneel on the top platform 12 during use as illustrated in Figure 5. Bishow does not disclose any regulating components that control rotation between said lower housing and said upper platform. The shaft 20 and nut assembly 28 are described in Bishow as holding the planar base 12 to the bottom member 14, i.e., the shaft 20 and nut assembly 28 prevent the planar base 12 from being separated from the bottom member 14. There is no discussion or reference in Bishow on how the shaft 20 and the nut assembly 28 would control rotation between the planar base 12 and the lower housing 24. Applicant requests respectfully that this rejection be withdrawn, as Bishow does not disclose each and every element of claim 6 as filed or amended.

The Examiner rejects claims 6 and 7 under 35 U.S.C. §102(b) as allegedly being anticipated by Zetocha et al. (U.S. Pat. No. 5,683,337). This rejection is respectfully traversed.

Zetocha discloses an exercise device on which the user stands to do a twisting motion. The Examiner implies that the regulating components are the resistance knob 40, the compression spring 42, and the screw thread 44. These components by themselves as disclosed in Zetocha are not capable of being the regulating components

recited in claim 6. Therefore, as Zetocha is relied upon in the Office Action, it does not teach each and every element of claims 6 and 7, which depends from claim 6. Applicant respectfully requests that the Examiner withdraw this rejection as it fails to articulate elements upon which an anticipation rejection can be made.

The Examiner rejects claims 6, 7, and 9 under 35 U.S.C. §102(b) as allegedly anticipated by Hartz (U.S. Pat. No. 4,905,994). This rejection is respectfully traversed.

Hartz discloses a tilting rotational recreational device for practicing skiing. The Examiner makes reference to "regularly component 242, 262," Applicant assumes the Examiner meant to say "regulating components 242, 262." Using this assumption, teeth rings 242, 262 are for locking in place lower skewcut column member 24 together with superjacent upper skewcut column member 26. The skewcut column members 24, 26 together with teeth rings 242, 262 are means for altering the angular relationship between the base plate 22 and the rotatable platform 30. See col. 4, line 30. Additionally, teeth rings 242, 262 are between what the Examiner has classified as the cap, to wit, skewcut column members 24, 26. Therefore, teeth rings 242, 262 are not capable of being the regulating components of claim 6. The bolt 40 and wingnut 42 also cannot be the regulating components of claim 6, because they hold the skewcut column members 24, 26 together. Therefore, there is no basis to allege originally filed claim 6 or its dependent claim 7 and 9 are anticipated by Hartz.

Particularly with respect to claim 7, the Examiner has not alleged the presence of a friction material as recited in claim 7. Therefore, there is no basis to allege Hartz anticipates claim 7. Applicant respectfully requests that the Examiner withdraw this rejection.

The Examiner rejects claims 6-9, 15, and 16 under 35 U.S.C. §102(b) as allegedly being anticipated by Bonewitz (U.S. Pat. No. 3,100,639). This rejection respectfully is traversed.

Bonewitz discloses an exercise device that the user stands upon during use. The nylon washer 50 disclosed in Bonewitz does not teach the regulating components recited in amended claim 6. Nylon washer 50 is disclosed as reducing friction between castellated nut 49 and plate 20. Col. 3, lines 11-15. The castellated nut 49 is cottered to the bolt 13. *Id.* Thus, the castellated nut 49 is not adjustable on bolt 13 and the nylon washer 50 is not adjustable. Therefore, Bonewitz does not anticipate amended claim 6 and dependent claims 7-9, 15, and 16.

Additionally, the Examiner alleges that claim 15 recites "a first pad" and that it is taught by the sheet of ribbed rubber 27. Applicant is confused as to what the Examiner is referring to in claim 15, as there is "a fist pad" recited but no "first pad" is recited. The sheet of ribbed rubber 27 along the top of the Bonewitz device is not a fist pad. Therefore, there was no basis stated for anticipation of claim 15 by Bonewitz in the Office Action.

With respect to claim 16, the Examiner alleges that head 30 of bolt 13 is a stopper as recited in claim 16. The bolt 13 is used to hold the Bonewitz device together. The bolt 13 and its head 30 do not prevent rotation of the platform 12 relative to the base 11. While in claim 16, the openings through which the recited stopper passes through are vertical in nature such that the stopper inherently prevents the upper platform from rotating relative to the lower housing. Therefore, there was no basis stated for anticipation of claim 15 in the Office Action.

Applicant respectfully requests that this rejection be withdrawn.

The Examiner has rejected claims 1-3 under 35 U.S.C. §103(a) as allegedly being unpatentable in part based upon Bishow in view of Montgomery (U.S. Pat. No. 5,226,868). These rejections are respectfully traversed. Claims 2 and 3 both depend from claim 1.

Bishow fails to teach the large protuberance (the Examiner matched this with the lower housing of Applicant) 24 engaging the upper platform 12. Instead, Bishow discloses other components providing the connection between these parts. Thus, the large protuberance 24 and the upper platform 12 of Bishow fail to teach the recitation of "a lower housing engaging said upper platform" recited in claim 1.

Additionally, the Examiner's reliance upon Montgomery has no basis. Montgomery teaches away from using the disclosed handles on a device allowing for rotation. See col. 2, lines 32-61, col. 3, lines 63-65, col. 4, lines 3-4. Also, the Examiner has not pointed to anything in the relied upon art to show a motivation to combine the art in the manner proposed by the Examiner.

Furthermore, Applicant respectfully requests that the Examiner produce documentary proof and/or an affidavit stating the basis for the statement that the particular dimensions and features of the handle are considered as obvious design preferences within the knowledge of one skilled in the art. This is particularly true since none of the art relied upon by the Examiner discloses a handle as recited in claim 1. Applicant respectfully requests that these rejections be withdrawn.

The Examiner rejects claim 8 under 35 U.S.C. §103(a) as allegedly being unpatentable over Zetocha et al. in view of Anbar (U.S. Pat. No. 3,593,994). This rejection is respectfully traversed.

Claim 8 depends from claim 6. As stated above, the Examiner failed to state a basis for rejecting claim 6 based upon Zetocha. The Examiner offers no basis in this rejection to make up for the deficiencies of that prior rejection of claim 6 based upon Zetocha. Therefore, claim 8 is patentable over this combination and Applicant respectfully requests this rejection withdrawn.

The Examiner has rejected claims 8 and 15 under 35 U.S.C. §103(a) as allegedly being unpatentable over Hartz. This rejection is respectfully traversed.

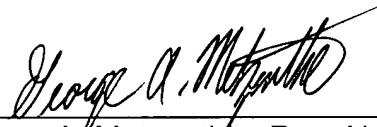
As stated previously, claim 6 is submitted as being patentable over Hartz and claims 8 and 15 both depend from claim 6. Therefore, it is submitted that both claims 8 and 15 are also patentable over claim 6. Additionally, the Examiner has offered no basis or motivation for adding a footing to the device disclosed in Hartz. With respect to claim 15, the Examiner errantly makes reference to "a first pad" when the claim recites a "fist pad." Hartz, in fact, teaches away from the addition of a "fist pad," because the user stands on it to simulate skiing and thus does not place a fist on top of the disclosed device. For the above reasons, Applicant respectfully requests the Examiner to withdraw this rejection.

Applicant acknowledges the Examiner's indication of allowable subject matter in claim 4 and submits that claim 4 has been amended to satisfy 35 U.S.C. §112, second paragraph. Based on the patentability of claims 1 and 3 as discussed above, Applicant submits that claim 4 is in condition for allowance.

Applicant also acknowledges the Examiner's objection to claims 10 and 14. Applicant has amended claim 10 to include all of the elements of the base claim and the intervening claim. Claim 14 was not amended, because it depends from claim 10.

In view of the above amendments and Remarks, it courteously is urged that all the claims are allowable and that the application now is in condition for allowance. Favorable action in this regard earnestly is solicited.

Respectfully submitted,
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Applicant : STAN SCHALL, JR.

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Group Art Unit: 3764

For : EXERCISE APPARATUS

LETTER SUBMITTING MARKED UP CLAIMS

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Attached to this Letter are the marked-up claims 4, 6, 10, 13, 15, and 16 showing the amendments made in the concurrently filed Amendment from the claims as currently pending in the above-identified application.

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4. (Twice Amended) The exercise device according to claim 3, wherein
said lower housing having

- a bottom surface having an opening passing therethrough,
- a wall extending up from said bottom surface, and
- a central passageway, said central passageway extends up from the opening in said bottom surface, said central passageway includes
 - a threaded section, and
 - a locking section having a circular cross-section with at least one keyway channel radially extending from said circular cross-section;

said upper platform having

- a bottom surface,
- a nesting unit extending downward from said bottom surface, said nesting unit including an outer wall forming a recess, said nesting unit passes through the opening of said bearing element; and

said exercise device further including regulating components,

said regulating components include

- friction material in communication with the recess of said nesting unit,
- an adjustment device having a screw mechanism, said screw mechanism engages said threaded section of said lower housing, and
- a compression component aligned with said adjustment device, said compression component having

a lower portion with at least one guide key, said at least one guide key engages said at least one keyway channel of said lower housing, and

a upper portion, said upper portion is tapered radially inward from said lower portion to a top of said upper portion, said upper portion nests within said recess of said nesting unit to apply compression forces to said friction material, said upper portion extends through the opening in said lower housing cap and the opening in said bearing element.

6. (Amended) An exercise device comprising:

a upper platform,

a lower housing connected to said upper platform, said lower housing includes a floor with a hole passing therethrough,

a lower housing cap resting on and aligned with said lower housing,

a bearing element resting on said lower housing cap and abutting said upper platform, said bearing element allows said upper platform to rotate relative to said lower housing, and

regulating components that control rotation between said lower housing and said upper platform, said regulating components include an adjustment mechanism; and

wherein said adjustment mechanism is accessible through the hole in said floor of said lower housing.

10. (Twice Amended) [The] An exercise device [according to claim 9,
comprising:

a upper platform,

a lower housing connected to said upper platform,

a lower housing cap resting on and aligned with said lower housing,

a bearing element resting on said lower housing cap and abutting said upper
platform, said bearing element allows said upper platform to rotate relative to said lower
housing, and

regulating components that control rotation between said lower housing and said
upper platform; and

wherein said lower housing cap having an opening passing therethrough,

said bearing element having an opening passing therethrough,

said lower housing having

a bottom surface having an opening passing therethrough,

→ a wall extending up from said bottom surface, and

a central passageway, said central passageway extends up from the
opening in said bottom surface, said central passageway includes

a threaded section, and

a locking section having a circular cross-section with at least one
keyway channel radially extending from said circular cross-section;

said upper platform having

a bottom surface,

a nesting unit extending downward from said bottom surface, said nesting unit including an outer wall forming a recess, said nesting unit passes through the opening of said bearing element; and

said regulating components include

friction material in communication with the recess of said nesting unit,

an adjustment device having a screw mechanism, said screw mechanism engages said threaded section of said lower housing, and

a compression component aligned with said adjustment device, said compression component having

a lower portion with at least one guide key, said at least one guide key engages said at least one keyway channel of said lower housing, and

a upper portion, said upper portion is tapered radially inward from said lower portion to a top of said upper portion, said upper portion nests within said recess of said nesting unit to apply compression forces to said friction material, said upper portion extends through the opening in said lower housing cap and the opening in said bearing element.

13. (Amended) An exercise device comprising:

a lower housing including a lower housing cap, a cylindrical base, and a rim around a periphery of said cylindrical base, said lower housing cap rests on said cylindrical base, said lower housing cap having an opening passing therethrough,

an upper housing shrouding said cylindrical base, said upper housing includes a platform, a cylindrical extension extending down from said platform, a handle extending

upward from said platform, and a rim around an inside cavity of said cylindrical extension, said rim engages said rim of said lower housing,

[means for rotating said platform of said upper housing relative to said lower housing such that said lower housing remains stationary while said platform freely rotates on said lower housing, said means providing an opening passing therethrough aligned with the opening of said lower housing cap, and

means for resisting rotation in communication with said lower housing and said upper housing, said resisting rotation means are internal to [an internal space formed by] said lower housing and said upper housing, said resisting rotation means passing through the opening in said lower housing cap and the opening in said rotating means.

15. (Amended) [The] An exercise device [according to claim 6, wherein] comprising:

a upper platform, said upper platform includes

an upper surface opposed to said bottom surface, and

a fist pad attached to said upper surface and extending above said upper surface,

a lower housing connected to said upper platform,

a lower housing cap resting on and aligned with said lower housing,

a bearing element resting on said lower housing cap and abutting said upper platform, said bearing element allows said upper platform to rotate relative to said lower housing, and

regulating components that control rotation between said lower housing and said upper platform.

16. (Amended) An [The] exercise device [according to claim 6, further] comprising:

a upper platform,

a lower housing connected to said upper platform,

a lower housing cap resting on and aligned with said lower housing,

a bearing element resting on said lower housing cap and abutting said upper platform, said bearing element allows said upper platform to rotate relative to said lower housing,

regulating components that control rotation between said lower housing and said upper platform, and

a stopper[,]; and

wherein said upper platform includes a wall extending downwardly from a peripheral edge, said wall having an opening passing therethrough,

said lower housing includes an opening passing therethrough, when the opening of said lower housing is aligned with the opening of said upper housing, said stopper engages the opening of said lower housing and said upper housing.